STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 18, 2006
v KAMAL MANSOUR IBRAHIM, Defendant-Appellant.	No. 259832 Macomb Circuit Court LC No. 02-002873-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v MIKE M. IBRAHIM, Defendant-Appellant.	No. 259835 Macomb Circuit Court LC No. 02-002871-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v JASON MANSOUR IBRAHIM, Defendant-Appellant.	No. 259836 Macomb Circuit Court LC No. 02-002872-FC

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

These consolidated cases arise out of an altercation that occurred at Computer Builders Warehouse (CBW) in Warren on June 6, 2002. Defendants Kamal Ibrahim, Mike Ibrahim, and Jason Ibrahim are brothers who, along with two other brothers, Ronnie and Sami Ibrahim, went

to CBW to confront Eugene and Wisam "Walter" Jamil about a family conflict. On the day of the incident, the Ibrahim brothers entered CBW, threatened to kill Eugene and Walter, and physically assaulted the two men.

I. Motions for Directed Verdict

Mike and Jason Ibrahim argue that this Court should reverse their convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, and conspiracy to assault with intent to commit great bodily harm less than murder, MCL 750.157a, because the trial court incorrectly denied their motions for directed verdict on the greater charges of assault with intent to commit murder, MCL 750.83, and conspiracy to assault with intent to commit murder, MCL 750.157a.

We need not decide the merits of defendants' motions for directed verdict, however, because, were we to agree that the trial court erred by submitting the greater charges to the jury, any error was harmless. See *People v Graves*, 458 Mich 476, 479 n 2; 581 NW2d 229 (1998). As in *Graves*, any alleged error was cured when the jury acquitted defendants of the greater charged offenses. *Id*. at 486. In other words, "a defendant has no room to complain when he is acquitted of a charge that is improperly submitted to a jury, as long as the defendant is actually convicted of a charge that was properly submitted to the jury." *Id*. at 486-487. Counsel for both Mike and Jason do not dispute that the charges of assault and conspiracy to assault with intent to commit great bodily harm less than murder were properly submitted to the jury. Moreover, they present no argument that the jury reached a compromise verdict. Accordingly, if we concluded that the trial court should have granted their motions for directed verdict, defendants would not be entitled to reversal on this basis. See also, *People v Moorer*, 246 Mich App 680; 635 NW2d 47 (2001).

II. Sufficiency of the Evidence

All three defendants assert that the prosecutor presented insufficient evidence to convict them of assault with intent to commit great bodily harm less than murder, MCL 750.84, and conspiracy to assault with intent to commit great bodily harm less than murder, MCL 750.157a. As our Court recently explained:

> We review de novo challenges to the sufficiency of the evidence in a criminal trial to determine whether, when viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found all the elements of the charged crime to have been proven beyond a reasonable doubt. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Additionally, we are "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). [*People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2006).]

To establish the crime of assault with intent to commit great bodily harm less than murder, the prosecutor must show "(1) an attempt or threat with force or violence to do corporal

harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1998). Defendants were tried for the crime on an aiding and abetting theory, MCL 767.39.[1] "In order to convict a defendant as an aider and abettor, the prosecution must show that the crime was committed by the defendant or another, that the defendant performed acts or gave encouragement that aided or assisted the commission of the crime, and that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time the defendant gave the aid or assistance." *People v Jones*, 201 Mich App 449, 451; 506 NW2d 542 (1993).

"Assault with intent to do great bodily harm less than murder is a specific intent crime." *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986). However, "[d]efendant's specific intent or his knowledge of the principal's specific intent may be inferred from circumstantial evidence." *Id*. Moreover, "[b]ecause the law recognizes the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to sustain a conclusion that a defendant entertained the requisite intent." *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985); see also *People v Guthrie*, 262 Mich App 416, 419; 686 NW2d 767 (2004).

With regard to the conspiracy charge, as our Supreme Court explained in *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993):

> "A conspiracy is a partnership in criminal purposes." *People v Atley*, 392 Mich 298, 310; 220 NW2d 465 (1974) (quoting *United States v Kissel*, 218 US 601, 608; 31 S Ct 124; 54 L Ed 1168 (1910)) [overruled on other grounds *People v Hardiman*, 466 Mich 417; 646 NW2d 158 (2002)]. "The gist of the offense of conspiracy lies in the unlawful agreement between two or more persons." *Atley*, 392 Mich at 311. Establishing a conspiracy requires evidence of specific intent to combine with others to accomplish an illegal objective. *Atley* at 310.

Defendants claim that the prosecutor failed to establish that they had the requisite intent to do great bodily harm to Walter because their other brother, Sami, stabbed Walter and none of them knew that Sami had a knife. Here, evidence established that, after Ronnie Ibrahim demanded money from Eugene and threatened to return with his brothers, all three defendants entered CBW, demanded to see Walter and Eugene, and threatened to physically harm and kill both men. Indeed, witnesses testified that Kamal led his brothers into the building and was screaming and threatening to kill both Walter and Eugene. Despite attempts to calm them down and persuade them to leave, evidence established that defendants only became more aggressive and, as they waited for the two men, they also threatened other employees.

[1] MCL 767.39 provides that, "[e]very person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

When Eugene and Walter came in from the warehouse at CBW, defendants confronted them and continued to threaten them physical harm. Indeed, testimony established that Jason pointed at Walter and said he intended to kill him. Evidence also showed that Kamal stood in the doorway to the office in which the assault occurred, and Mike shut a nearby door to prevent employees from intervening. Eugene testified that Mike started the physical altercation by pushing him and, according to Eugene, he was beaten by all three defendants. Walter testified that, when he tried to pull or push one of the defendants away from Eugene, he was pepper sprayed by Ronnie and stabbed by Sami.

" 'Aiding and abetting' describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime . . . ." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001). While evidence showed that Sami ultimately stabbed Walter, the evidence above clearly established that Kamal, Mike, and Jason Ibrahim incited the fight, expressed an unequivocal intent to kill both Eugene and Walter, were integral to the physical altercation that led to Walter's injuries as he tried to protect his brother, and attempted to keep other employees from interfering with the attack. This evidence was clearly sufficient to show that defendants intended to do great bodily harm to Walter and assisted or encouraged the stabbing. Moreover, evidence showed that defendants acted as a group to go to Walter and Eugene's place of business and to confront, threaten, and attack both men as a reprisal for their failure to pay or apologize to their sister. Further, it is immaterial that these defendants did not actually stab Walter because "[i]t is not necessary that one conspirator participate in all the objects of the conspiracy." *People v Izarraras-Placante*, 246 Mich App 490, 494; 633 NW2d 18 (2001). Clearly, ample evidence showed that defendants acted as a group to commit the crime and, therefore, their convictions are affirmed.[2]

III. Sentencing

Kamal and Mike contend that the trial court incorrectly sentenced them in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, in *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), our Supreme Court held that *Blakely* does not apply to Michigan's sentencing system. Accordingly, defendants are not entitled to resentencing on this basis.

To the extent that Mike Ibrahim also takes issue with the trial court's scoring of certain individual offense variables, we also reject his arguments. Mike asserts that the trial court should have scored offense variable 1 and offense variable 2 at zero points because he did not have a weapon and this does not qualify as a "multiple offender" case. MCL 777.31; MCL

[2] For the same reasons, we reject Mike Ibrahim's claim that the trial court should not have given the aiding and abetting instruction and should have granted his motion for new trial because the jury's verdict was against the great weight of the evidence. The trial court's jury instruction was correct, based on the evidence submitted at trial and it did not abuse its discretion in denying the motion for new trial because ample evidence established each element of the charged crimes. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2003).

777.32. As the prosecutor points out, Mike was convicted of conspiracy and of aiding and abetting the assault. It is well settled that a defendant who is found guilty of aiding and abetting is convicted and punished as if he directly committed the offense. MCL 767.39. Further, in a conspiracy case, "each conspirator is held criminally responsible for the acts of his associates committed in furtherance of the common design, and, in the eyes of the law, the acts of one or more are the acts of all the conspirators." *People v Grant*, 455 Mich 221, 236; 565 NW2d 389 (1997). Moreover, no statutory language suggests that, in order to qualify as a "multiple offender" situation, all defendants must be tried at a single trial. MCL 777.31(2)(b); MCL 777.32(2). Accordingly, Mike's claims are without merit.

We also reject Mike's argument that the trial court misscored offense variable 9 (OV 9). Under the statute, MCL 777.39(1)(c), a defendant should be scored 10 points if there are two to nine victims. Mike asserts that, because the charges only named Walter as a victim, the trial court should not have also punished him for his assault on Eugene. However, the statute explicitly states that, for purposes of scoring the variable, a "victim" is considered "each person who was placed in danger of injury or loss of life . . . ." MCL 777.39(2)(a). In addition to his convictions for his participation in the assault on Walter, evidence clearly showed that Mike physically beat Eugene. Accordingly, the trial court correctly scored OV 9.

IV. Assistance of Counsel

Mike also raises several claims of ineffective assistance of counsel and requests that we remand this case for a *Ginther*[3] hearing. MCR 7.211(C)(1)(a) provides that, pursuant to a timely filed motion, this Court may grant a remand if the moving party shows that the issue should be first decided by the trial court or, with an offer of proof, that a factual record must be developed for appellate review.[4] We note that Mike has failed to comply with the timing or filing requirements of MCR 7.211(C). Further, on the basis of Mike's arguments, we find that remand is unnecessary for a decision or further factual development.

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[3] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[4] Though we recognize that unpublished opinions are not binding, MCR 7.215(C)(1), we find the following observations persuasive in *People v Patterson*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2004 (Docket No. 247746) because of the limited case law on this issue:

> Remand may be granted if the motion identifies an issue sought to be reviewed on appeal and shows (1) that the issue should be initially decided by the trial court or (2) that development of a factual record is required for appellate consideration. MCR 7.211(C)(1)(a). Where remand is sought to develop the record, an affidavit or offer of proof regarding the facts to be established on remand is required. MCR 7.211(C)(1)(a)(ii). In determining whether to remand, this Court can consider whether the defendant has shown that the issue is meritorious. *People v Hernandez*, 443 Mich 1, 15; 503 NW2d 629 (1993), abrogated in part on other grounds *People v Mitchell*, 454 Mich 145 (1997).

"To establish ineffective assistance of counsel, defendant must show (1) that his trial counsel's performance fell below an objective standard of reasonableness and (2) that defendant was so prejudiced that he was denied a fair trial, i.e., that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v Walker*, 265 Mich App 530, 545; 697 NW2d 159 (2005). Mike contends that his counsel should not have also represented his brother Jason. Mike concedes, however, that he told the trial court on the record that he and Jason retained the attorney together to represent them jointly, that they understood that they could retain separate counsel, and that they did not believe there was a conflict of interest in the joint representation. Mike argues, however, that during Jason's testimony, he blamed Mike for starting the assault and this established a conflict of interest. We agree with the prosecutor that Jason merely testified that Mike attempted to intervene when Eugene attacked Sami and that Eugene then tried to strangle Mike. While the jury evidently rejected this testimony, it clearly did not present a conflicting version of events that would serve to implicate Mike in the crime. Accordingly, Mike has failed to show an actual conflict or that his counsel actively represented conflicting interests. *People v Smith*, 456 Mich 543, 557; 581 NW2d 654 (1998).[5]

Mike also asserts that his counsel was ineffective because he admitted defendants' guilt during his closing argument. Again, defendant misconstrues the record. While defense counsel admitted that the behavior of the Ibrahim brothers may have "breech[ed] some social or ethical or moral standard," he argued that none of defendants' actions amounted to illegal conduct. In light of the overwhelming evidence that defendants burst into the business and loudly confronted Walter and Eugene, defense counsel's characterization was reasonable; he clearly intended to emphasize to the jury that a mere lapse in propriety does not constitute a crime. Defendant has failed to overcome the "strong presumption that defense counsel's action constituted sound trial strategy" and, therefore, he is not entitled to reversal on this basis. *Walker, supra* at 545.[6]

[5] Mike further complains that his trial counsel failed to meet with him between the preliminary examination and trial. However, Mike concedes that he participated in a lengthy strategy session regarding whether he should testify and he decided not to do so. In any event, Mike has failed to explain how his counsel's alleged failure to meet affected his performance at trial. *Walker, supra* at 545.

[6] Mike also asserts that his trial attorney should have obtained recordings of the calls made to 911 because they may have shown that two trial witnesses lied about the "manner" and "reasons" for the calls and "amount of time" they took. Mike fails to explain what the recordings would reveal or how the evidence would have assisted his case. While he argues that the recordings may have undermined the witness's testimony about how many calls were made or how long they took, this is clearly speculative. Further, defendant has not shown a reasonable probability that, had the jury heard the time and manner of the 911 calls, the outcome of the proceeding would have been different. *Walker, supra* at 545.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra